

REMARKS

Claims 1 and 39 has been amended to correct an informality in each claim. No new matter has been added. Upon entry of this Amendment, claims 1-42 remain pending. Reconsideration of the present application is respectfully requested in view of the remarks below.

In the Office Action dated April 5, 2005, claim 39 was objected to for containing an informality. Applicants have amended claim 39, as suggested by the Examiner, to correct the informality. Accordingly, Applicants respectfully request that the objection to claim 39 be withdrawn.

In the Office Action, claims 1-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wigton et al. (U.S. Patent No. 6,145,243) in view of Prather (U.S. Patent No. 6,443,434). Applicants respectfully traverse this rejection.

Independent claim 1 recites a device for attracting and capturing flying insects that includes, *inter alia*, “at least one airflow generator operable to generate (a) an outflow flowing outwardly to the surrounding atmosphere through the at least one outflow opening, the outflow consisting essentially of ambient air from the surrounding atmosphere with the insect attractant diffused therein from the supply.” (Emphasis added.) Claim 1 also includes “an attractant receptacle in which the supply of diffusible insect attractant is received, the attractant receptacle being positioned such that the outflow flows through the receptacle for exposure to the insect attractant, the attractant receptacle being constructed to enable the insect attractant to be removed therefrom for replacement.” (Emphasis added.) Claim 1 further includes “an electrically-powered heater disposed proximate the attractant receptacle, the heater being operable to heat the supply of the diffusible insect attractant in the attractant receptacle above ambient temperature so as to facilitate diffusion of the insect attractant in the outflow.”

Wigton et al. discloses an insect trapping device that generates its own insect attractant of carbon dioxide, heat, and water vapor through catalytic conversion of a hydrocarbon fuel in a combustion chamber. (Wigton et al. at abstract.) An exhaust tube (44) provides the exhaust flow of the insect attractant, e.g., the carbon dioxide. (Wigton et al. at col. 5, lns. 4-6, and Figure 3.) Thus, the outflow does not consist essentially of ambient air from the surrounding atmosphere with the insect attractant diffused therein, as recited in claim 1.

The “consisting essentially of” language precludes the presence of the combustion exhaust in Wigton et al. from being within the scope of claim 1. MPEP §2111.03 explains that the phrase “consisting essentially of” limits the scope of the claim to the specified materials (here – ambient air and insect attractant diffused therein) “and those that do not materially affect the basic and novel characteristics of the claimed invention.” MPEP §2111.03, *citing In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). Wigton et al. is discussed in Applicants’ background section at paragraphs [0015]-[0016]. The present invention provides a lower cost device so that it will be available to more consumers. As explained by Applicants, the lower cost may be achieved by providing a device that does not use carbon dioxide as the attractant, and, hence, does not need a combustion chamber. *See also* paragraph [0058] of Applicants’ specification. Applicants have created a compact and efficient device that uses ambient air from the surrounding atmosphere and an insect attractant that is diffused into the air to attract insects. As such, Wigton et al. does not disclose or suggest the feature of “the outflow consisting essentially of ambient air from the surrounding atmosphere with the insect attractant diffused therein from the supply,” as recited by claim 1.

Moreover, Wigton et al. does not disclose or suggest an attractant receptacle that is positioned such that the outflow flows through the receptacle for exposure to the insect attractant, and that is constructed to enable the insect attractant to be removed therefrom for replacement. Wigton et al. specifically teaches that a small open vial (134) that contains a volatile insect attractant compound may be placed in either of enclosures 16 or 18, and that the evaporating compound will be drawn into the exhaust flow by exhaust fan 64. (Wigton et al. at col. 9, lns. 12-16.) As conceded by the Examiner, Wigton et al. does not disclose or suggest an electrically-powered heater that is operable to heat the supply of the diffusible insect attractant.

The Examiner relies on Prather to show an electrically powered heater to increase the rate of diffusion of an attractant. However, Prather does not cure all of the deficiencies of Wigton et al. Prather discloses a dispenser for scents used to attract deer and other animals (Prather at abstract), not a device for attracting and capturing flying insects. The liquid scent is held in a container (18) with an open top, and the housing (10) includes a holder (20) in the form of an open top receptacle to hold the container (18). (Prather at col. 2, lns. 31-34.) Air is pulled into the housing (10) through an inlet (12) and exits through an outlet (14). (Prather at col. 2, ln. 66 – col. 3, ln. 1.) A fan (14) moves a stream of air through the dispenser

housing (10) and vapor from the heated scent is mixed with the incoming air. (Prather at col. 3, lns. 1-4.) Prather does not disclose or suggest, at least, an attractant receptacle that is positioned such that the outflow flows through the receptacle for exposure to the insect attractant, and that is constructed to enable the insect attractant to be removed therefrom for replacement, as recited by claim 1.

Because the combination of Wigton et al. and Prather does not teach or suggest all of the features of claim 1, Applicants respectfully submit that claim 1 and claims 2-25 that depend from claim 1 are patentable over Wigton et al. in view of Prather, and respectfully request that the rejection to claims 1-25 be withdrawn.

Independent claim 26 recites a method for attracting and capturing insects that includes, *inter alia*, “generating, with the at least one airflow generator, an outflow flowing outwardly through at least one outflow opening provided on the device and communicated to a surrounding atmosphere, the outflow consisting essentially of ambient air from the surrounding atmosphere with the insect attractant diffused therein from the supply thereof.” (Emphasis added.) Claim 26 also includes “heating the supply of the diffusible insect attractant above ambient temperature with the electrically-powered heater to facilitate diffusion of the insect attractant and flowing the outflow through the attractant receptacle for exposure to the insect attractant.” (Emphasis added.) Wigton et al. and Prather are discussed above. Neither Wigton et al. nor Prather or the combination of the two, disclose or suggest these features.

Accordingly, Applicants respectfully request that the rejection to claim 26, and claims 27-31 that depend therefrom, be withdrawn.

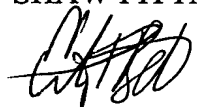
Independent claim 32 recites a device for attracting and capturing flying insects that includes, *inter alia*, an attractant receptacle that receives the supply of the diffusible insect attractant and has at least one adjustable opening that is selectively adjustable so as to control exposure of the insect attractant, thereby controlling a rate of diffusion of the insect attractant. Applicants respectfully submit that none of the art of record discloses or suggests this feature.

The Examiner has taken the position that *In re Stevens*, 101 USPQ 284 (CCPA 1954), supports the premise that it would have been obvious to make the opening of the attractant receptacle adjustable. Applicants respectfully disagree. The court in *In re Stevens* held that “adjustability, where needed, is not a patentable advance.” *In re Stevens*, 101 USPQ at 285. The court also explained that the need for adjustment in a fishing rod had been long recognized as desirable. *In re Stevens*, 101 USPQ at 285. In that case, an adjustable fishing

rod was already known, and a single pivot was replaced by a universal joint. *In re Stevens*, 101 USPQ at 285. In contrast, neither Wigton et al. nor Prather disclose or even remotely suggest that their open vials that hold liquid scents are adjustable, or that there is any need for them to be adjustable. As is clearly explained in MPEP §2144, the facts in a prior legal decision must be sufficiently similar for the Examiner to use the rationale used by the court. *In re Stevens* does not apply to the present case. Accordingly, Applicants respectfully submit that claim 32 is patentable over Wigton et al. in view of Prather, and respectfully request that the rejection to claim 32, and claims 33-42 that depend therefrom be withdrawn.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited. If any point remains at issue which the Examiner feels may best be resolved through a personal or telephone interview, please contact the undersigned at the telephone number below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,
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